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September 16, 2010

**ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Ex Parte, CS Docket No. 97-80, PP Docket No. 00-67**

Dear Ms. Dortch:

This is to inform you that on September 15, 2010, Matthew Zinn, Senior Vice President, General Counsel, Secretary & Chief Privacy Officer, TiVo Inc. ("TiVo") and the undersigned met with the following Commission staff:

- (1) Eloise Gore, Acting Legal Advisor to Commissioner Mignon Clyburn;
- (2) Brad Gillen, Legal Advisor to Commissioner Meredith Attwell Baker;
- (3) Rosemary Harold, Legal Advisor to Commissioner Robert M. McDowell; and
- (4) Sherrese Smith, Legal Advisor to Chairman Julius Genachowski, along with Bureau Chief William Lake, Deputy Bureau Chief Robert Ratcliffe, Deputy Bureau Chief Kris Monteith, Nancy Murphy, Mary Beth Murphy, Brendan Murray, Alison Neplokh, and Jeff Neumann, all of the Media Bureau.

We stressed the arguments made in the comments and reply comments filed by TiVo in response to the *Fourth Further Notice of Proposed Rulemaking* in CS Docket No. 97-80 and PP Docket No. 00-67, FCC 10-61 ("*CableCARD FNPRM*"). The arguments made by TiVo are set forth in the attached summary given to the Commission staff listed above.

Please direct any questions regarding this matter to the undersigned.

Respectfully,

A handwritten signature in black ink, reading "T. Devendra Kumar". The signature is written in a cursive style with a long horizontal stroke at the end.

Henry Goldberg  
Devendra T. Kumar  
*Attorneys for TiVo Inc.*

cc: Eloise Gore  
Brad Gillen  
Rosemary Harold  
Sherrese Smith  
William Lake  
Robert Ratcliffe  
Kris Monteith  
Nancy Murphy  
Mary Beth Murphy  
Brendan Murray  
Alison Neplokh  
Jeff Neumann

## **Summary of TiVo CableCARD NPRM Position**

**TiVo position:** The FCC has the opportunity to take immediate action to preserve and introduce device competition. TiVo proposes a few simple and straightforward rules:

- An IP backchannel solution to the prevalence of “switched digital” techniques, based on existing standards and protocols.
- Universal operator support for self-installation of CableCARDS, the feasibility of which is no longer question; and point-of-sale provisioning by interested retailers.
- Universal offer of “M-CARDS” – the same CableCARD used in leased boxes.
- Non-discrimination against subscribers who choose competitive devices and an end to financial penalties for choosing competition.

**Cable Industry opposition:** NCTA does not argue that these simple solutions are unachievable. NCTA could not argue this because at least one of its members is *already* supporting self-installation; at least one member pledges that it does not discriminate in pricing; and no member has said an IP Backchannel solution is unworkable.

Rather, NCTA argues that reform is *unnecessary* because the FCC is moving on to an “AllVid” solution. Yet in its AllVid filings, NCTA urges the FCC *not* to institute an AllVid rulemaking. Instead, NCTA proposes a set of lofty principles with no implementation plan.

The FCC should focus on what is necessary and achievable, and should not be deterred by arguments that are inconsistent, irrelevant, and transparently self-serving.

**Consumer Self-Installation.** NCTA finally accepts self-installation in principle, but *only* by MSOs that *also* support self-installation of set-top boxes. Few MSOs support self-installation of their own set-top boxes so NCTA’s position represents zero progress in alleviating the well-known “professional” installation problems.

- This NCTA stance misses the point of CableCARDS, which, unlike set-top boxes, were *designed* for consumer self-installation.

**Tuning Adapters vs. IP Backchannel.** The Tuning Adapter solution adds an estimated \$125 in cost, plus a truck roll, every time a subscriber asks for one. TiVo estimates the IP Backchannel solution costs \$10-25,000 to serve 25,000 users (i.e., less than \$1 per sub)

- Docket 97-80 continues to receive **dozens** of *ex parte* filings from consumers with specific recountings of tuning adapter installation and performance nightmares that discourage all but the most determined consumers.

- Despite NCTA's overwrought claims, industry comments demonstrate that the IP backchannel is a much better, cheaper, and more customer-friendly solution. Standardization would not be difficult were the industry motivated to do so.
- The tuning adapter was designed to be a short-term fix, not a long-term solution. Longer-term, this two box solution acts as a choke-point to ensure that UDCPs cannot compete on an equal footing with MSO leased-boxes.

**Discrimination Against Consumers Who Use Competitive Devices.** NCTA does not deny that most of its members discriminate economically against subscribers that choose competitive devices. NCTA simply challenges the FCC's authority to do anything about it.

- Operators should be required to disclose, in advance, CableCARD rental fees and any other fees associated with third party equipment (i.e., digital outlet fees). Operators should ensure that all such fees on operator websites are easily accessible so that consumers can compare the costs of the use of leased versus retail set top box equipment.
- Subscribers using retail STBs should be eligible for all multi-service discounts.
- Where STBs are included in the price of a bundled offer, the fees allocable to the rental of a STB should be discounted from the bundled price for subscribers using retail STBs.
- Such requirements would not contravene existing law or regulation as they would not govern the price at which operators choose to market services or devices.

**Waivers.** NCTA devotes most of its comments and *ex parte* filings to arguing on behalf of DTA waivers that would weaken implementation of Section 629.

- The requirement to use CableCARDS in operator devices plays an important if incomplete role in operator support for retail devices. Before granting any further waivers, the FCC should ensure that concrete steps are taken to eliminate the disparity in the subscriber experience for customers who choose retail products.
- Motorola claims that DTAs *with integrated security* are substantially cheaper than CableCARD-enabled devices and claims that CableCARDS add \$56 in cost to a STB. Before considering any further waivers, the FCC must understand the economics of CableCARDS. With volume, the costs of making CableCARDS and building CableCARD interfaces should have declined precipitously. CableCARD manufacturers should provide detailed cost information so that the FCC can understand whether a CableCARD really adds significant cost; if so, why; and the impact of volume on pricing.